



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings

- against - : FINAL

Police Officer George Mastrokostas : ORDER

Tax Registry No. 935263 : OF

Police Service Area 2, VIPER 2 : DISMISSAL

Police Officer George Mastrokostas, Tax Registry No. 935263, having been served with written notice, has been tried on written Charges and Specifications numbered 2020-21673 and 2021-23512, as set forth on form P.D. 468-121, dated April 21, 2020 and June 3, 2021 respectively, after a review of the entire record, Respondent is found Guilty of Specifications 1, 2, 3, and 5 in Disciplinary Case No. 2020-21673 and Not Guilty of Specifications 4 and 6 in Disciplinary Case No. 2020-21673. I further find Respondent Guilty of Specifications 1 and 2 in Disciplinary Case No. 2021-23512.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer George Mastrokostas from the Police Service of the City of New York.


KEECHANT SEWELL
POLICE COMMISSIONER

EFFECTIVE

1/13/22



POLICE DEPARTMENT

December 30, 2021

-----X-----
In the Matter of the Charges and Specifications : Case Nos.
- against - : 2020-21673
Police Officer George Mastrokostas : 2021 23512
Tax Registry No. 935263 :
Police Service Area 2, VIPER 2 :
-----X-----

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: David Green, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Angelo MacDonald, Esq.
The MacDonald Law Firm
200 West 60th Street, Suite 3C
New York, NY 10023

To:

HONORABLE KEECHANT SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2020-21673

1. Said Police Officer George Mastrokostas, while assigned to the 32nd Precinct, on or about June 19, 2019 through June 20, 2019, while off-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer waited in his personal vehicle outside the residence of a woman, identity known to the Department, who had told said Police Officer to cease all contact with her, and repeatedly telephoned said woman and threatened said woman and her boyfriend with physical or other injury or harm, causing said woman to fear for her physical safety.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer George Mastrokostas, while assigned to the 32nd Precinct, on or about June 20, 2019, while off-duty, having engaged in a pattern of threatening or otherwise inappropriate conduct against a woman, identity known to the Department, resulting in the response of uniformed members of the Department, wrongfully failed to remain at the scene of the incident, identify himself to said responding police officers, or to request the response of the patrol supervisor, precinct of occurrence.

P.G. 212 32, Page 1, Paragraphs 1 & 2

OFF DUTY INCIDENTS
INVOLVING UNIFORMED
MEMBERS OF THE SERVICE
COMMAND OPERATIONS

3. Said Police Officer George Mastrokostas, while assigned to the 32nd Precinct, on or about thirty-six (36) occasions between about August 12, 2018 and October 10, 2018, wrongfully and without just cause accessed and conducted unauthorized queries on Department computers or Department databases unrelated to the official business of the Department.

P.G. 219-14, Page 1, Paragraph 2

DEPARTMENT COMPUTER
SYSTEMS
DEPARTMENT PROPERTY

4. Said Police Officer George Mastrokostas, while assigned to the 32nd Precinct, on or about June 20, 2019, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer wrongfully impeded or attempted to impede an official Department investigation by making misleading or otherwise inaccurate statements regarding his relationship with a woman, identity known to the Department and his having conducted unauthorized queries in Department databases

during an official Department interview conducted by members of the [REDACTED] Investigations Unit.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS**

5. Said Police Officer George Mastrokostas, while assigned to the 32nd Precinct, on or about June 20, 2019, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer wrongfully impeded or attempted to impede an official Department investigation by making false or misleading statements regarding his relationship with a woman, identity known to the Department and his having conducted unauthorized queries in Department databases during an official Department interview conducted by members of the Manhattan North Investigations Unit.¹

P.G. 203 08, Page 1, Paragraph 1 & Note

**MAKING FALSE STATEMENTS
GENERAL REGULATIONS**

6. Said Police Officer George Mastrokostas, while assigned to the 32nd Precinct, on or about and between June 2018 and July 2019, wrongfully utilized his personal boat which was kept in a [REDACTED] marina, as his permanent residence.

P.G. 203 10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS**

56 RCNY §§ 3-20 & 4-14
Department of Parks and Recreation

**UNLAWFUL USE OF A SLIP
OR VESSEL**

Disciplinary Case No. 2021-23512

1. Said Police Officer George Mastrokostas, while assigned to PSA 2 and on sick report, in or about June or July 2020, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer, knowing that Person A [REDACTED] had made allegations of misconduct against him and cooperated in the Department's investigation of those allegations, wrongfully wrote Ms. [REDACTED] Person A personal cellular telephone number, along with other inappropriate or sexually-suggestive language, on the walls of private booths inside two (2) Kings County shops selling sex videos and related products, Sunset Video and Jayoda Video.

P.G. 203 10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

¹ Though Respondent was subsequently interviewed by members of the Manhattan North Investigations Unit, I note that the June 20, 2019 interview at issue in this specification was conducted by members of the Patrol Borough [REDACTED] Investigations Unit.

GENERAL REGULATIONS

2. Said Police Officer George Mastrokostas, while assigned to PSA 2 and on sick report, on or about fifteen (15) different dates between August 2, 2020 and November 9, 2020, was wrongfully and without just cause absent from his residence without the permission of said Police Officer's District Surgeon and/or the Sick Desk Supervisor.

P.G. 205-01, Page 1, Paragraph 1

REPORTING SICK-- PERSONNEL MATTERS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on December 1, 2, 3 and 13, 2021. Respondent, through his counsel, entered a plea of Not Guilty to all charges. The Department called [REDACTED] Person A [REDACTED] Police Officer Paul Burns, Police Officer Kevin Geoghegan, Lieutenant Sarcanda Symister, Police Laboratory Criminalist Grace Warmbier and Police Officer Andrew Collette as witnesses. Respondent called Andrew Lobianco, Gretel M.² and Hansel M.³ as witnesses and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of Specifications 1, 2, 3, and 5 in Disciplinary Case No. 2020-21673 and Not Guilty of Specifications 4 and 6 in Disciplinary Case No. 2020-21673. I further find Respondent Guilty of Specifications 1 and 2 in Disciplinary Case No. 2021-23512. I further recommend that Respondent be DISMISSED from this Department.

² "Gretel M." is a pseudonym for Respondent's daughter, who is a minor. Her true name and residence are known to the Tribunal.

³ "Hansel M." is a pseudonym for Respondent's son, who is a minor. His true name and residence are known to the Tribunal.

ANALYSIS

The following is a summary of the facts which are not in dispute.

Respondent is a 17-year member of Service who is presently assigned to Police Service Area 2 (T. 708, 710). Person A is a [REDACTED] [REDACTED] (T. 40). She met Respondent in or about the fall of 2018, at the [REDACTED] Branch of TD Bank in [REDACTED] at that time. Person A was employed there as a teller/customer service representative (T. 41-43, 46). Person A maintained a social media presence which included personal photographs she posted of herself and other family members (T. 159). At all periods relevant to the charges in these cases, she lived across the street from Andrew Collette, who is a Member of Service (T. 101-102).

In the late evening hours of June 19, 2019, Respondent drove his black [REDACTED] pickup truck to Person A home and remained in the area for several hours, finally leaving near 0530 hours on June 20, 2019. During that time, he had several in-person verbal exchanges with Person A one of which occurred while she was in his truck. When Person A exited the truck, she told Respondent that she was calling 911 because he would not leave the area. At approximately 0500 hours, Person A made the first of three 911 calls. As Respondent sat in his truck at the end of Person A's block, he saw at least one police car responding to the area of Person A home. Police Officers Paul Burns and Kevin Geoghegan of the 121st Precinct responded to Foundoulakis' home and interviewed her regarding the 911 calls she had made (T. 105-119, 213-220, 252-258, 900, 901; Dept. Ex. 1).

Respondent admitted during his trial testimony that when he saw police responding to the scene, he concluded that Person A had indeed called for police service after she had told him she was doing so; despite reaching this conclusion, he admitted that he did not identify himself to

Police Officers Burns and Geoghegan and did not request the response of a supervisor (T. 902-904).

Respondent further admitted during his trial testimony that he used Department databases to access private information about [REDACTED] Person A [REDACTED] some of her family members and Andrew Collette for his personal reasons (T. 838-839, 863-865, 868, 871).

Respondent also admitted during his trial testimony that while he was on modified duty, he left his home on several occasions without first seeking permission from his District surgeon (T. 839-841).

Disciplinary Case No. 21673-2020

[REDACTED]

She testified that her first encounter with Respondent occurred when he presented himself at the bank and asked to make a \$70,000⁴ cash withdrawal. [REDACTED] Person A [REDACTED] according to TD Bank policy, inquired what Respondent intended to do with the funds. She advised Respondent that since the transaction was for greater than \$8,000, it was required to be reported to the Internal Revenue Service. The form [REDACTED] expected to complete called for the amount of the transaction, the purpose for which it was to be used and the occupation of the customer (T. 43).

According to [REDACTED] Person A [REDACTED] Respondent told her that the funds were going to be used for his daughter's "Sweet Sixteen" party⁵. She asked him whether it might be more convenient and safer for the bank to issue Respondent a check made out to the establishment where the party was to be held, since the requested sum was large. Respondent lifted his shirt and displayed a

⁴ Counsel for Respondent cross-examined her on the amount and asked if she was sure that it wasn't \$90,000. [REDACTED] Person A [REDACTED] answered that it may have been but she was sure that it was a large amount (T. 187-188).

⁵ Respondent admitted during his trial testimony that this assertion was false: the true purpose of the withdrawal, as he testified, was for the down-payment on a boat. He explained that he was concerned about bank employees questioning how he, as a police officer, could afford a \$140,000 boat so he elected to fabricate a reason for the withdrawal (T. 720, 915).

weapon in a holster, stating that he was a New York City detective and was not concerned about becoming the victim of a robbery: "I'm a cop I have nothing to worry about" (T. 44).

She explained to Respondent that, according to TD Bank policy, she would need to speak to her manager before the withdrawal could be completed. Person A left Respondent, brought her manager over to him and the manager explained the bank's policies to him, before approving the transaction. She also advised Respondent that the [REDACTED] branch did not maintain funds in that amount and that it would take several days to collect the funds for his use. She indicated that she would contact him when the funds were ready, so he could return to the branch and pick them up, unless he preferred to pick up the funds from a different branch. Respondent then stated that he would return to the [REDACTED] branch and that he would only deal with her because he did not want to have to explain himself again (T. 45-46).

Person A testified that Respondent volunteered that he was a police officer; that he was a single father raising three children; and that he was paying for his daughter's party because his wife "could care less." When Person A informed him that someone from the bank would contact him, he appeared to be unhappy. She explained that he wanted to make sure that she would be the one calling him and that she would handle his transactions. He left his contact information and departed the branch (T. 47-48).

Person A testified that Respondent did call three to four times that week asking for her by name, and inquiring whether the funds had arrived. Toward the end of the week, Respondent appeared at the [REDACTED] branch. He waited on line until Person A was free, then walked up to her, saying, "Hi, remember me?" She testified that she said she did and said, "You're here for your daughter's sweet sixteen." Person A then directed him to the

rear of the office so that he could meet with her manager and complete necessary paperwork (T. 49-51).

According to [REDACTED] Person A [REDACTED] she used a currency counting machine to count the bills twice, then counted the money by hand. [REDACTED] Person A [REDACTED] testified that while counting the funds, Respondent told her how difficult it was to be a single father raising girls and that the party had to be in [REDACTED] to be convenient for his "bitch of an ex-wife." [REDACTED] Person A [REDACTED] did not respond to that comment but offered the opinion that she was sure the catering hall would accept another form of payment other than cash; she then asked Respondent whether he had a bag to carry the money. Respondent responded that he did not; she then asked him how he was going to take the money out of the bank. Respondent laughed and stated that he was a cop and no one was going to take anything from him. [REDACTED] Person A [REDACTED] offered that he could use a bank bag but that he would have to return it. Respondent agreed that he would do so, took the bag containing the funds and walked to his car. [REDACTED] Person A [REDACTED] testified that she had expected Respondent to return the bank bag immediately but when he did not return, assumed that he had departed with it (T. 51-56).

Several days later, Respondent appeared at the [REDACTED] branch and returned the bank bag to [REDACTED] Person A [REDACTED] "wav[ing] it around, saying, "Look, I brought back your bag" (T. 56). [REDACTED] Person A [REDACTED] asked how the preparations for the "Sweet 16" party were going and Respondent replied, "It would be really nice if my bitch of an ex-wife actually gave a shit about her kids and planned the party herself," rather than him having to do it. He continued to explain that he had been working for so many years and was "at top pay," which led his ex-wife to think he could be "milked" into paying for everything. [REDACTED] Person A [REDACTED] responded that she was sorry he was experiencing that and hoped his daughter would enjoy her party. She recalled that he made a

cash withdrawal of about \$10 so that he could make a purchase at a delicatessen which did not accept debit cards (T. 57-58).

Person A testified that over the next few weeks, Respondent began appearing at the [REDACTED] branch frequently, allowing other bank customers to go ahead of him on line so that Person A would be the teller to handle his banking. Respondent would also call the bank and ask to be directed to Person A. She characterized this behavior as odd but overlooked it in the interest of maintaining good customer relations (T. 58-59).

Person A testified that on one occasion, she answered a call from Respondent with the greeting, "Thank you for calling TD on [REDACTED]; this is Person A speaking. How can I make your day better?" Respondent replied, "You want to know how you can make my day better? You want to go out on a date with me?" (T. 59). According to Person A over the next month, Respondent began calling the bank and asking for her at least once per shift (T. 61). The calls involved requests for balances or the status of automatic transfers (T. 62).

In addition to the telephone calls, Respondent continued to make frequent in-person appearances at the Forest Avenue branch, sometimes asking for minimal cash withdrawals. On one occasion in October 2018, Respondent asked Person A why she wouldn't "give him a chance" (T. 62, 73). After Respondent called the bank again, requesting to speak with her, ostensibly for banking services, he told her that he would really like to take her out on a date.

Person A testified that she said, "Thank you, but no thank you. I have a boyfriend." When Respondent persisted, stating that he really wanted to take her out on a date, she stated, "I'm not interested: you're inappropriate for constantly calling and asking [me out] on a date; I have a boyfriend; and please stop asking me because my answer will always be no." According to Person A Respondent slammed the phone down, ending the call (T. 64-65).

Person A testified that the next day she drove to work and arrived at approximately 0630 hours; her car was only one of two in the parking lot at that hour (T. 65-66). When she unlocked the door to the general public at 0730 hours, she saw Respondent standing waiting to be admitted to the bank. When she opened the door, Respondent laughed and said, "It's pretty dead in here, huh?" She responded that since the bank had just opened and that he was their first customer of the day, then it made sense for the bank to be quiet. Respondent then mentioned that he only saw two cars in the parking lot and asked if they were the only two people in the bank (T. 67-68). She then asked what she could do for him and he responded that he wanted to know why she would not go out on a date with him (T. 70-71).

Person A testified that she responded, "Don't you have a job to get to? It's very early and I thought I already said no. And according to me and everybody else in this world, no means no in any form of language or culture. So I don't know how I would possibly be able to express to you how uninterested I [am] in proceeding to continue any form of interactions that didn't include banking and even that's pushing it." She testified further that Respondent then became agitated and began to yell, asking her if he was not good-looking enough for her. He offered that he could "take [her] to places that [she] had never been to and show [her] different things that [she] never experienced in [her] life" (T. 71). Person A testified that she began feeling uncomfortable and asked Respondent to leave; he replied that "he [was] a customer and had every right to be there (T. 71-72). She responded that if he did not have any banking needs, she would prefer that he leave, because there was nothing that she could help him with (T. 72-73). According to Person A, Respondent began yelling, complaining that it was disgusting how he was being treated, then he "stormed out" of the bank (T. 73). She testified that she informed the head teller that Respondent had been calling her and had made a scene in the bank;

when she asked [REDACTED] Person A [REDACTED] if she wanted to do anything about it. [REDACTED] Person A [REDACTED] stated that she only wanted to make the head teller aware of the situation and that she would speak to the branch manager herself (T. 73-74). She testified that when other tellers approached her and asked who the individual was who kept calling the bank asking for her, she told them he was a "disgruntled customer that had a weird obsession" (T. 74).

Several days later, Respondent came into the bank and stood on line: [REDACTED] Person A [REDACTED] told her co-workers that she did not want to wait on Respondent and asked one of them to do so. According to [REDACTED] Person A [REDACTED] her co-workers attempted to honor her request but Respondent allowed other people to move ahead of him on line in order for her to be the teller who attended to him (T. 75). Respondent told her that he was a customer who just wanted his banking done and since she worked there, she had to take care of him (T. 74-75). [REDACTED] Person A [REDACTED] testified that she told him she did not have to and would not, before stepping away from her station and walking to the rear of the bank (T. 75-76). When the head teller, who had apparently witnessed the interaction, approached [REDACTED] Person A [REDACTED] teller station and offered to help Respondent, he refused, saying, "Absolutely not, I only deal with her" (T. 76). The head teller responded that she was more than qualified to assist him and asked what he needed; Respondent yelled, "Absolutely nothing!" before walking out of the bank (*Id.*).

[REDACTED] Person A [REDACTED] testified that her next contact with Respondent was through a text message to her personal mobile telephone: she stated that she never provided her telephone number or any other personal information to Respondent (T. 77). She acknowledged that her mobile telephone number was associated with her New York State Department of Motor Vehicles records and further acknowledged that the vehicle she drove to work was registered in her name (*Id.*). She testified that the text read "Hi," with a :) (T. 79). When she responded, "Who is this?"

Respondent replied, "It's George :)" (*Id.*). When she asked how he obtained her number, Respondent replied, "I'm a cop, ha ha silly, did [she] forget" (T. 80). Person A testified that she asked him never to contact her again and blocked his number (T. 81). Despite blocking the number, she received text messages from numbers which were not in her contacts on a daily basis over the next two months; whenever she queried who the sender was, the response was, "George" (T. 81-82).

Person A testified that she did not report any of the Respondent's actions to this Department because his frequent reminders that he was a police officer suggested to her that he believed any complaint she lodged would be discounted. She acknowledged performing a Google search of his name and discovering derogatory information which suggested that since he was still a police officer in the face of such information, there may be some basis for his assertion that he was beyond accountability (T. 83-84). Person A testified that Respondent's actions, combined with the results of her Google search, made her concerned that she was dealing with someone who was potentially dangerous (T. 85). He also represented to her that he "knew people in really high places" (T. 91).

Person A testified that Respondent continued coming into the bank and that she continued trying to avoid him; on the occasions when she was unable to avoid attending to him, he would tell her she was not going to get away from him that easily; that he was still a customer; and that she needed to show him respect (T. 86-87). The situation degraded to the point where she refused to interact with Respondent and informed her supervisors that she would not be attending to him any longer. According to Person A when Respondent entered that bank and she refused to handle his banking, he would shout, call her profane names, and insist

that the customer was always right, before threatening her, saying, "Watch what is going to happened to [you] next" (T. 87-88).

She testified that she had no contact with Respondent for approximately three months before he came to the bank in the winter of 2019. Respondent approached her teller station and attempted to withdraw a small amount of funds; Person A refused to attend to him, stating, "This has to be a joke." She testified further that Respondent went to another teller and conducted an unusually long transaction, even remaining inside the bank after his transaction had been completed. Person A testified that he was inside the bank for a total of 15-20 minutes (T. 90). Respondent began appearing at the bank more frequently but Person A was able to avoid handling his bank transactions (T. 92). During this period, she acknowledged dealing with several of his banking transactions conducted over the telephone; on those occasions, he would provide his account information, without identifying himself by name, so that by the time the bank's database identified him, Person A was already in the middle of the transaction (T. 93-94). She further acknowledged that on several occasions, when she recognized that she was dealing with Respondent, she hung up the telephone and ended the call but Respondent would always call back (T. 96). Person A testified that Respondent would initiate these calls three to four times a day on days she was working (*Id.*).

According to Person A there was a period of several months when she had no contact with Respondent, either in-person or by telephone (T. 97). She testified that on June 20, 2019, at approximately 0430 hours, she left Andrew Collette's home; Collette is her boyfriend and she had fallen asleep there after going over to visit him at approximately 2000 hours the previous evening (T. 101-102, 106). When she began walking across the street toward her home, she noticed a black pickup truck, with blacked-out windows, blocking her driveway (T. 106). By

the time she reached the middle of the street, the driver's window rolled down and she saw Respondent holding a mobile telephone, which displayed a map⁶ (T. 107-110). According to Person A [REDACTED] she asked Respondent, "What the hell are you doing outside my home?" (T. 108). Respondent replied, "Fucking cunt; I'm going to make your life miserable. The first thing I'm going to do is visit your little boyfriend at the academy"⁷ (T. 108-109). Person A [REDACTED] asked Respondent, "How did you get my address?" he responded, "You forget that I'm a cop. I can do whatever the fuck I want" (T. 110). She testified that she told him, "You have no right to be here;" he responded, "I'm a cop. I can be wherever I want, whenever I feel like it" (*Id.*). She asked Respondent again, "How did you get my address?" to which he responded, "I ran you" (*Id.*). Person A [REDACTED] testified that she then told him that he was "an absolutely disgusting and sick human being" (T. 111). She testified further that Respondent was shouting at her, saying, "You don't know who the fuck you are messing with; I have connections in high places and I can do whatever I want, whenever I want, without consequences, exactly like what is going on right now" (*Id.*). When she told him that she was going to call the police, he replied, "They are not going to help you; I'm a cop, they will drive right by. Go for it, if that's what you choose to do" (T. 111-112).

Person A [REDACTED] testified that she attempted to walk in front of the truck to get to her front door but Respondent moved the truck forward; she then attempted to walk behind the truck and Respondent reversed the truck, blocking her path again (T. 112). According to [REDACTED], Respondent demanded that she talk to him and told her that she was "not allowed to leave until [they] spoke" (T. 114). She testified that she replied, "There is nothing to talk about. I don't have anything to say to you. You are not welcome here; please leave" (*Id.*). Respondent then

⁶ Person A [REDACTED] testified that she had never given Respondent her home address (T. 107)

⁷ Person A [REDACTED] testified that she had never given Respondent any information about Collette (T. 144).

told her, "If you don't talk to me, I'm going to take my truck and ram it into your house; then I'm going to back up and hit your little boyfriend's house. I hope he comes outside to go to the Academy, so hopefully then he gets what he wants" (*Id.*). Person A testified that she told Respondent he was out of his mind; he replied, "Well, you don't want me, so now he is not going to have you either" (T. 115). She testified that she then acquiesced to Respondent's demands and got into his truck, where they engaged in a heated discussion (T. 115-116). Person A testified that Respondent began slamming his hands on his steering wheel, while telling her that they could have had a perfect life together; that he was so good for her but she was choosing not to be with him for someone else" (T. 116-117). She told Respondent that the two of them would never be anything and she did not know where he got the idea that he would even have had a chance; at that point, Respondent began slamming his hand into the dashboard of the truck (T. 117). Person A then told Respondent there was nothing more to talk about and that he needed to leave, as she attempted to get out of the truck (*Id.*). She testified that she had to manually unlock the door in order to exit and that Respondent grabbed her arm before she pulled it away and jumped out (*Id.*). Once Person A got out of Respondent's truck, she began dialing 911 on her mobile telephone (*Id.*).

She testified that she called 911 three times because she was first redirected to Internal Affairs, then on the second call, she was redirected to "311," then again to Internal Affairs (T. 119-123; Dept. Ex. 1-1, 1-2, 1-3). According to Person A she told Respondent she was calling 911 because she did not understand why he was there; his response was to laugh and say, "I'm a cop, the cops will drive right past your house, and they will not stop because all I have to do is tell them that I'm a cop on the job" (T. 118). She testified that she had this conversation with him while she was standing outside his truck and he had the passenger window rolled down

(*Id.*). Foundoulakis told the 911 operators that there was an officer in plain clothes outside her home; that she did not invite him there and was unwelcome; and that a car should be sent immediately (T. 123).

Person A [REDACTED] testified that she ran inside her home and woke up her mother, whom she told about the interaction outside with Respondent (T. 125). They both waited until police officers knocked on their door; Person A [REDACTED] opened the door and described her encounter with Respondent to the two police officers (T. 128-129). According to Person A [REDACTED] by the time the officers went to look for the truck, they were unable to locate it (T. 132). The police officers transported Person A [REDACTED] to the 121st Precinct where she was interviewed by investigators (T. 130).

In and about October 2020, Person A [REDACTED] was called into a meeting with her supervisor and a representative from TD Bank Human Resources. She was informed that Respondent had called the bank, representing himself as a New York City detective and alleging that he noticed an irregularity in his bank accounts. He accused Person A [REDACTED] of mishandling his accounts. As a result of the accusation, Person A [REDACTED] was terminated by TD Bank (T. 140-142, 145).

On cross-examination, Person A [REDACTED] conceded that she had a dog named Spike; she was shown a copy of a photograph which she identified as one she had taken of her dog (T. 151-152; Resp. Ex. A). When asked if she sent the photograph to Respondent, she denied doing so and asserted that the picture looked like one she may have posted on Snapchat (T. 153).

Person A [REDACTED] was shown another copy of a photograph which she identified as a "to-do" list her mother had written but denied that it had been posted on Snapchat or sent to Respondent or anyone else (T. 156-157; Resp. Ex. B). She was also questioned about another photograph which she identified as being of her brother and herself; she conceded that the photograph had

been posted to her Instagram account but denied sending it to Respondent (T. 158-159; Resp. Ex. C). Person A identified another copy of a photograph as being of herself but denied sending it to Respondent (T. 159-160; Resp. Ex. D). Person A was shown seven other copies of photographs which she testified she did not recognize (T. 160-164; Resp. Exs. E, F, G, H, I, J, K).

Person A was shown a copy of a photographs which she identified as depicting the back office area of TD Bank; she denied sending the photograph to Respondent (T. 164-165; Resp. Ex. L). She conceded sending the photograph to her mother to let her know that she was still at work (T. 165). Person A conceded that she received a moving violation in [REDACTED] [REDACTED] and that she paid it; she testified that she did not recognize Respondent's Exhibit M, which is a three page document that included copies of the moving violation, a screenshot of a computer monitor and a photograph of envelopes addressed to her (T. 166-167). She denied receiving solicitations from attorneys in connection with the moving violation and denied that the address on the envelopes was hers (*Id.*).

Person A was shown a copy of a photograph she identified as depicting hair ties but was unable to recognize them as her hair ties (T. 168-169; Resp. Ex. N). She further denied that the picture of a woman in the avatar that appeared next to the photograph was of her (T. 169). She further denied any knowledge of whether her picture appeared on Respondent's phone if she sent him a text message (*Id.*).

Person A denied ever being on Respondent's boat (T. 161). She also denied having a romantic relationship with Respondent (T. 171). She further denied traveling with him to [REDACTED] [REDACTED] having meals with him; being on his boat; sending him photographs; or discussing plans for his new home (T. 171-172).

Person A further denied receiving any gifts from Respondent and denied recognizing a gift depicted in Respondent's Exhibit O (T. 172-173).

Person A further denied making any telephone calls to Respondent but identified a telephone number which appeared on Respondent's Exhibit P as hers (T. 176-177, 179). She denied ever telling Respondent that she had broken up with her boyfriend and later telling him that she had gotten back together with that boyfriend (T. 179). She also denied visiting adult video stores with Respondent on two occasions (T. 179-180).

Person A conceded that, prior to her 911 call, she never filed an official complaint with either her former employer or the Internal Affairs Bureau with respect to any of the behavior she attributed to Respondent which occurred in TD Bank (T. 180-181). She further conceded that she never used her mobile telephone to record Respondent during any of the incidents with Respondent she testified about (T. 181). Person A testified that on June 20, 2019, she was in Respondent's truck for approximately five minutes and during that time, the vehicle was stationary (T. 192-193).

Person A testified that she did see Respondent at a marina on [REDACTED] on one occasion in 2019 but that she had no interaction with him (T. 195). She again denied having any social interaction with Respondent outside of TD Bank (*Id.*). She specifically denied ever having sex with Respondent; going out on a date with him; going on a trip with him; or exchanging romantic messages with him (T. 196). Person A denied dropping off anything at Respondent's residence or his boat after he was released from the hospital; she further denied any social meeting with Respondent's daughter outside of TD Bank (T. 197). She conceded that she exchanged one text message with Respondent on the evening of June 19, 2019 into June 20, 2019 (T. 198).

Police Officer Paul Burns

Police Officer Paul Burns testified that on June 20, 2019, he was assigned to the [REDACTED] Precinct and was working a midnight tour of duty with his partner, Police Officer Kevin Geoghegan (T. 212-213). At approximately 0510 hours, he received a dispatch call of harassment, possibly involving a Member of Service, with an address (T. 213-214). Burns recalled driving onto the block where the incident address was located and driving past a black pick-up truck with tinted windows double parked near the corner (T. 216-217). As he stopped his vehicle in front of the location, he observed several police cadets in a vehicle across the street (T. 215-216). He approached the vehicle and asked the cadets whether they had called 911, but they denied doing so (T. 215). Burns told the cadets to stand by and approached the location of the 911 call (*Id.*). He testified that he knocked on the door and it was opened by [REDACTED] Person A [REDACTED] who informed him that a person had been harassing her and that he was a police officer (T. 222). Burns recalled that there was another woman present, whom he assumed was [REDACTED] Person A [REDACTED] mother (T. 221). She also informed Burns that Respondent had been calling and harassing her, refusing to leave her alone (T. 222). Burns described [REDACTED] Person A [REDACTED] demeanor as "calm but upset and frustrated" (*Id.*, 241-244).

When Burns learned that the subject of the 911 call was a Member of Service, he requested the response of a supervisor to the location (T. 223). He then went outside, accompanied by [REDACTED] Person A [REDACTED] to see if he could locate the black pick-up truck she described, but there was no vehicle present by the time they stepped out [REDACTED] Person A [REDACTED] home (*Id.*, 240). Burns then went across the street and spoke with the cadets, one of whom was Andrew Collette. After a brief discussion, he directed Collette to accompany him to the [REDACTED] Precinct to be interviewed (T. 232-233).

Police Officer Kevin Geoghegan

Police Officer Kevin Geoghegan testified that on June 20, 2019, at approximately 0510 hours, he was on duty in the [REDACTED] Precinct with his partner, Police Officer Paul Burns (T. 250-251). At about that time, he and Burns responded to a harassment call (T. 252). As they approached the block of the location, Geoghegan recalled observing a pick up truck on that block, but could not recall any further details about it (T. 253-255, 269). He could not recall whether the lights on his vehicle had been activated (T. 271). Geoghegan recalled approaching the location and observing a car containing police recruits, who he recognized from their grey uniform shirts (T. 255). After asking the recruits if they had called 911, which they denied doing, he and Burns walked up to the front door to the residence (T. 257).

Geoghegan recalled the door being opened by a young woman ([REDACTED] Person A) accompanied by an older woman, whom he assumed was her mother (*Id.*, 260). He described Person A's demeanor as "concerned and upset" (*Id.*). She explained that she had called 911 because "there was a gentleman that was harassing her, was driving to her residence . . . harassing her over the phone . . . caus[ing] her to be . . . alarmed" (T. 258). Geoghegan recalled that the young woman identified the person who was harassing her as a Member of Service (Respondent), which alerted him to the requirement that a supervisor had to be notified (T. 258-259). He testified that [REDACTED] Person A described Respondent driving a pickup truck and said that the truck was parked down the block, where Respondent could be found (T. 260). When he and Burns went outside, he did not observe a vehicle fitting that description (T. 260-261). Geoghegan was unable to state with any certainty that the truck he observed as he and Burns were driving onto the block was the same truck Foundoulakis described (T. 261). He recalled transporting her to the [REDACTED] "Precinct thereafter (T. 262-263, 272).

Police Officer Andrew Collette

Police Officer Andrew Collette testified that he is assigned to the [REDACTED] Precinct where he performs patrol duties. He testified that he is a resident of [REDACTED] and lives across the street from [REDACTED] Person A [REDACTED] whom he identified as his girlfriend of approximately ten years. Collette acknowledged that he resides with his parents and is familiar with [REDACTED] Person A [REDACTED] family, with whom he and his parents socialize. He testified that he met [REDACTED] Person A [REDACTED] in 2011 and has been dating her since then with no breaks in their relationship (T. 474-480, 509-510).

Collette testified that on June 20, 2019, he was a Probationary Police Officer (PPO) student in the Police Academy (T. 482). At approximately 0430-0500 hours, he left his home to meet PPO Sandoval, with whom he intended to car pool to the Academy (T. 482-483, 511-512). Once Sandoval arrived, he and Collette waited for a third PPO to arrive before setting out for the Academy (T. 484).

Collette testified that he recalled [REDACTED] Person A [REDACTED] visiting him at his home at approximately 2000 hours the previous evening; they both fell asleep but when he woke up at the next morning, she had already departed (*Id.*). He testified further that when he left his house, he saw Sandoval and entered Sandoval's car; at about the same time, he saw a police vehicle drive onto the block and park in front [REDACTED] of Person A's [REDACTED] home (T. 485-486). Collette testified that he saw two uniformed officers exit the police vehicle and walk up the steps to [REDACTED] Person A [REDACTED] front door (T. 486). He stepped out of Sandoval's car and called out to the police officers, asking them if everything was all right; they told him to get back into Sandoval's car for the time being (T. 487). Collette saw [REDACTED] Person A [REDACTED] and her mother open the door for the police officers (T. 488).

Collette testified that he was approximately 30 feet from [REDACTED] Person A's [REDACTED] front door but could not hear what, if anything, was being said; he did observe that [REDACTED] Person A [REDACTED] appeared to

be upset and nervous, based upon her demeanor (T. 489-490). There came a time when Person A and her mother, ^{Person A's mother} exited their home; ^{the mother} approached him and told him to go to work but "somebody ha[d] been stalking Person A" (T. 491). He testified that ^{the mother} promised to explain everything later but assured him that everything was okay (*Id.*).

Collette testified that Person A had never told him that anyone was stalking her (T. 491-492). He detailed further that he identified Person A as his girlfriend and one of the police officers instructed him to "keep quiet for now, we'll go to the precinct to figure everything out but you are in no trouble" (T. 492). Collette recalled that when he saw Person A after she left her home, she looked upset (T. 493). He testified further that the police officers took him to the ■st Precinct, where he participated in a preliminary investigation; he asserted that the first time he heard Respondent's name was when the investigators named him and asked if Collette knew who he was (T. 494).

Collette testified that he did not speak to Person A that morning at the precinct but spoke to her several hours later; in that conversation, she apologized to him and told him that she had not wanted to involve him in anything but that there had been a man who would not leave her alone and who had shown up at her home. When he asked her who it was, Person A told him that it was a man she had helped at the bank who would always ask her out but she would tell him no. Collette testified further that Person A told him that this man would always call her and text her and that she was not concerned until he showed up at her home. He testified that he asked her why she did not tell him; Person A responded that the man was a cop, that he had a lot of time on, and that she was concerned about jeopardizing Collette's standing with this Department, since he was still probationary (T. 494-496, 516).

Collette testified that [REDACTED] Person A [REDACTED] had a social media presence and utilized Facebook and Instagram, sometimes posting photographs of family and friends to those sites (T. 504). He acknowledged that the car he drives is registered to his father and denied that he had ever given private information about himself, his vehicle or his family to Respondent (T. 506).

On cross-examination, Collette testified that [REDACTED] Person A [REDACTED] had told him that Respondent had showed up at the bank and threatened to have her fired; that he knew people who could ensure that it would happen; and that if he could not have her, then no one could (T. 520). He testified that he recognized Respondent's Exhibit C as a photograph of [REDACTED] Person A [REDACTED] and her brother but could not identify of any of the other subjects depicted in Respondent's Exhibits A through O (T. 550-551).

Lieutenant Sarcanda Symister

Lieutenant Symister testified that in June 2019, while she was assigned to Manhattan North Investigations, she was tasked with investigating the incident of June 19-20, 2019, as it pertained to Respondent (T. 282-283). She testified that she reviewed interviews which had been conducted on the morning of the incident, as well as previous investigative reports (T. 283). Lieutenant Symister also reviewed the recording and transcript of the Department interview conducted with Respondent on June 20, 2019 (T. 284-285; Dept. Exs. 3, 3A). She also interviewed [REDACTED] Person A [REDACTED] on several occasions as part of her investigation (T. 291).

Lieutenant Symister testified that in subsequent interviews with Respondent, he was asked whether he conducted searches of Department databases on approximately 36 occasions between August 12, 2018 and October 10, 2018; in each interview, he professed to have no recall of conducting such searches but he did not dispute that he had done so (T. 287-288). She testified that based upon her investigation, Respondent had queried [REDACTED] Person A [REDACTED] Person A's

mother [REDACTED] Person A's father [REDACTED] and Andrew Collette during that period (T. 289-90).

According to Department records, Respondent queried the databases for those individuals' addresses and license plate numbers (T. 289).

Lieutenant Symister testified further that she investigated an allegation that Respondent was using a boat as a permanent residence in violation of Department rules (T. 290: 323-324). During a Department interview, Respondent admitted to doing so (*Id.*).

Gretel M.

Gretel testified that she is [REDACTED] years old and Respondent's daughter; [REDACTED] [REDACTED] dfather (T. 574, 578). She testified further that during 2018 and 2019, Respondent was dating a woman named Person A (T. 580-581). Gretel testified that Person A's last name began with an [REDACTED] but that she did not remember it (T. 581). She described Person A as short and a little chubby with long brown hair (T. 582). Gretel testified that Person A lived on [REDACTED] and worked at TD Bank; she claimed that she had visited that bank on one occasion with Respondent and met Person A there (T. 583). She testified that she saw Person A on Respondent's boat on more than ten occasions when they took trips on it (T. 582-583). Gretel claimed that Person A spent time with her and Respondent in [REDACTED] [REDACTED] but did not take the boat trip there with them; according to Gretel, Person A spent the night on the boat in the compartment with her father (T. 584).

Gretel testified that she used to have Person A's mobile telephone number but eventually lost it; she testified further that they would send text messages to each other but never had a voice call (T. 585-586). She testified that Person A bought her gifts such as a green swimsuit because her mother forgot to pack a swimsuit for her when she traveled to [REDACTED] (T. 586-587). Gretel also testified that she and Person A had meals together and specifically recalled going

to one restaurant at a marina in [REDACTED] (T. 587). She testified further that Person A had a dog named Spike (T. 588).

Gretel testified that Respondent's Exhibit H is a photograph of her and Person A taken on Respondent's boat (T. 589-590). She also identified Respondent's Exhibits C and K as photographs of Person A (T. 594-595). Gretel testified that Respondent's Exhibit T is a picture of the swimsuit Person A purchased for her and Respondent's Exhibit U was a photograph of her brother and Person A (598-599). She identified Respondent's Exhibit V as a photograph of Person A taken on Respondent's boat (T. 600).

On cross-examination, Gretel testified that Respondent informed her on Wednesday, December 8, 2021, that she and her brother would be missing school and would be appearing before this Tribunal. Gretel testified that after Respondent asked her and her brother if they remembered Person A he then "explained the whole situation," meaning "how my dad got, like, cheated on by her" because "she had a boyfriend the whole time" (T. 603). Gretel conceded that she did not know the nature of the proceeding but recalled that Respondent told her that Person A had accused him of stalking her (T. 612-613, 615). She testified further that while she did not know the significance of the outcome of the proceeding, she believed that if Person A were found credible, that Respondent could "get in a lot of trouble," might not get disability and could be fired (T. 617-620). Gretel testified if Respondent were to be fired, then he would be unable to pay their bills, which would have a negative impact upon her (T. 621).

Hansel M.

Hansel testified that he is a [REDACTED] [REDACTED] T. 630). He testified further that he met Person A [REDACTED] on Respondent's boat and would often see them together when he visited

the boat (T. 631-632). Hansel recalled that there were more than ten occasions when he saw Person A on the boat (T. 632). While he testified that he only spoke with her "sometimes," he learned that she worked at a bank (T. 632). Hansel recalled that his sister Gretel actually spent more time socializing with Person A (*Id.*). He testified further that Person A was in [REDACTED] when he visited there with Respondent and his two sisters (T. 634).

Hansel testified that while he had Person A mobile telephone number, he never called her or exchanged text messages with her (*Id.*). He testified that Respondent's Exhibit U was a photograph of himself and Person A on Respondent's boat (T. 635). Hansel testified that he also recognized Person A in Respondent's Exhibit C (T. 636). He testified further that the photograph in Respondent's Exhibit H was of his sister Gretel and Person A (*Id.*). Hansel testified that Respondent's Exhibit W was a photograph of Person A Respondent, as well as two of his father's friends, Vinny and Andrew (T. 638). He also testified that Respondent's Exhibit V was a photograph of Person A laying prone on Respondent's boat (T. 639).

On cross-examination, Hansel testified that Respondent told him that the proceedings were about an accusation that he stalked Person A. Hansel testified that he met Person A and that accusation was not true (T. 641). He testified that he had that discussion with Respondent on the Wednesday evening before his testimony - December 8, 2021 (T. 642). Hansel acknowledged that he believed at the end of the proceeding, depending upon the outcome, Respondent might be in trouble (T. 643). He conceded that he did not want to see anything happen to his father or to have anything happen that could interfere with his ability to pay their bills (T. 651).

Andrew Lobianco

Andrew Lobianco testified that grew up with Respondent and has known him since 1984; they attended the same high school and attended one year of college together (T. 660). He testified that he considered himself a very dear friend (*Id.*). Lobianco testified that Respondent owned a 50-foot boat with three levels; he estimated that he had been on the boat five times, and operated the boat on two occasions (T. 660-661).

Lobianco testified that he met a woman known to him as Person A on one occasion on Respondent's boat; he testified that he believed Person A and Respondent were dating (T. 661-662). Lobianco testified that he did not much of an interaction with her, as his daughter accompanied him, but he did recall Person A telling him that she worked at TD Bank (T. 662). He testified that Respondent's Exhibit W was a photograph of himself and Respondent attempting to pull up an anchor which had become stuck; he identified a woman laying prone in the photograph as Person A (T. 663). Lobianco explained that he believed the photograph was taken on August 15, 2018 off [REDACTED] (T. 664). He testified that Respondent's Exhibit X was a photograph taken on Respondent's boat depicting Person A Gretel M., two other women whom he could not identify and himself (T. 664-665). Lobianco testified further that he recognized Respondent's Exhibit C as a photograph of Hansel M. and Person A (T. 665). He testified that Respondent's Exhibit H was a photograph of Gretel M. and Person A (T. 666).

Lobianco conceded on cross-examination that he did not know much about Respondent's police career and explained that there was a 15-year period where he and Respondent had lost touch with each other (T. 671). He testified that he knew Respondent worked in Harlem and recalled that he encountered him once in that area while he was on duty (T. 672).

Lobianco testified that Respondent asked him approximately one week before his testimony if he would come in to testify "because there was an issue with [Person A]" (T. 673). When he was asked what the issue was, Lobianco answered, "Nothing; it was just an issue" (*Id.*). He explained, "It was, basically, listen, we have an issue with her, would you come down, and just testify that she was on the boat with us" (*Id.*). Lobianco testified that he did not know the details of what the proceeding was about but Respondent told him, "I need you to come to clarify that she was on the boat" (T. 674). He denied knowing anything about the charges and how they might relate to [Person A]. He further denied knowing anything about any other allegations (*Id.*).

Lobianco testified that he did not ask any questions of Respondent to explain what was going on and had no desire to know the details (T. 675, 687-688). He conceded that as a friend of Respondent's, he had no desire to have anything bad happen to him (T. 683).

Respondent

Respondent testified that he is a 51-year old, 17½ year Member of Service who is divorced and the father of three children (T. 708, 710). He is currently assigned to Police Service Area 2 but was previously assigned to patrol duties in the 32nd and 70th Precincts (T. 710-712). Respondent has a pending disability retirement application (T. 719).

Respondent testified that he knows [Person A] and dated her for approximately 11 months (T. 719). He testified that he met her in May or June of 2018 when he went to the TD Bank [] branch to withdraw funds for the purchase of a boat (*Id.*). Respondent testified that he attempted to withdraw \$90,000, which came from the proceeds of the sale of his home, but that he did not want the bank to be aware that he was going to use the funds to purchase a boat; he told [Person A] and her manager that he was going to use the funds to

throw a party for his daughter (T. 720). He testified that he was told the funds would have to be ordered for his use and that he could return in several days to pick them up; he returned a few days later, counted the money in a back room and left the bank (*Id.*). Respondent testified that he carried the funds out of the bank in a bag the Bank provided (T. 721).

Respondent testified that around July 1, 2018, he called [REDACTED] Person A [REDACTED] at the bank and asked her out on a date (T. 721). According to Respondent, she agreed to the date and met him at an Applebee's on [REDACTED] (T. 722). He testified that after the date, they began calling and texting each other and developed a relationship (*Id.*, 724, 726). Respondent testified that [REDACTED] Person A [REDACTED] gave her mobile telephone number to him and he gave his to her. He testified further that [REDACTED] Person A [REDACTED] sometimes sent him photographs through text messages (T. 726). He testified that after their first date, he never called [REDACTED] Person A [REDACTED] at TD Bank again (T. 730). He further denied ever going to the bank and shouting at [REDACTED] Person A [REDACTED] (*Id.*).

He testified that he purchased a boat on July 13, 2018 and used it to host barbecues for family and friends, of which [REDACTED] Person A [REDACTED] was a participant (T. 723). Respondent testified that [REDACTED] Person A [REDACTED] would visit him on the boat every day; they would eat meals together and be intimate (T. 724-725). According to Respondent, during their first date, he told [REDACTED] Person A [REDACTED] that he was divorced with three children; he claimed that she told him that she had been in a relationship for seven years but had recently broken up with her boyfriend (T. 725). He testified further that [REDACTED] Person A [REDACTED] met all three of his children and many of his friends (T. 726). Respondent testified that all of his children had [REDACTED] Person A [REDACTED] telephone number but that she and his younger daughter, Gretel, would often text each other or communicate through Snapchat (T. 727-728).

Respondent testified that around July 17, 2018, he and his children took a trip on the boat to [REDACTED] to celebrate his older daughter's 16th birthday; according to Respondent, Person A was unable to make the boat trip due to work commitments but drove to [REDACTED] and stayed for one day, spending the night on Respondent's boat (T. 728-729). He testified further that approximately one week later, Person A seemed to be in a sad mood due to some family issues; he claimed he took her on a road trip to [REDACTED] (T. 730-731).

Respondent testified that toward the end of September 2018, Person A "started getting cold feet" because her mother did not approve of their age difference. He testified that he told her that he understood and that she should take as much time as she needed. In October, they decided that they would split up but remain friendly. According to Respondent,

Person A left his boat after they had the aforementioned discussion, but almost immediately sent him a text message. They agreed to meet at a Chinese restaurant on [REDACTED] and had a conversation in the parking lot. Respondent testified that after that, he "left her alone" and that any calls between them were initiated by Person A. He testified further that the breakup lasted until May 2019, when they again became intimate. During the period they were broken up, Person A would still visit him on his boat. According to Respondent, when

Person A had a rhinoplasty in November 2018, he sent her a fruit basket. He testified further that near Christmas 2018, he had his daughter drop off Person A's gifts at TD Bank. Respondent testified that Person A sent him text messages thanking him. He testified further that Person A sent him a text message on New Year's Day 2019, because he was scheduled for surgery on January 2, 2019 (T. 731-733).

Respondent testified that he was hospitalized for most of January 2019 due to complications from the surgery, during which time he had no contact with Person A. After

being released from the hospital in February 2019, he was out sick for a brief period, then returned to work. He testified that after visiting friends in [REDACTED] one night, he spent the night at a hotel in [REDACTED] because he was scheduled to pick up his children in [REDACTED] the next morning. According to Respondent, [REDACTED] Person A [REDACTED] contacted him approximately one week later, accusing him of meeting someone in a hotel for an assignation. Respondent testified that after denying any such conduct, he was flattered because that response from [REDACTED] Person A [REDACTED] showed that she was still interested in him and that she was monitoring his actions through her TD Bank resources (T. 734-735). He testified that he asked [REDACTED] Person A [REDACTED] "Oh, you ran my debit card," and she admitted that she had (T. 736).

Respondent testified further that he and [REDACTED] Person A [REDACTED] remained friendly and would communicate through calls and texts. He claimed that whenever [REDACTED] Person A [REDACTED] was in the [REDACTED] area, she would take a picture of herself near the water, which, in his mind, suggested that she was thinking of him. Respondent testified that in May 2019, he received an angry telephone call from [REDACTED] Person A [REDACTED] asking him why he was on Match.com if he was "waiting for [her]" (T. 737). He testified that he had not been on that website since his divorce but had neglected to cancel the subscription; he concluded from her reaction that she had again been monitoring his spending on his debit card (*Id.*).

Respondent testified that it was after that incident that they resumed their relationship. He claimed that [REDACTED] Person A [REDACTED] told him that she no longer cared what her mother thought; that she had tired of [REDACTED] that she had tired of her mother's rules; and that she just wanted to be with him (T. 738). It was at that point that Respondent and his ex-wife agreed that he would receive full custody of their children, necessitating the sale of his boat and the purchase of a house (*Id.*). According to Respondent, he and [REDACTED] Person A [REDACTED] discussed the prospect of her

moving in with him once he purchased his new home and she helped him look for prospective homes and shop for furniture (*Id.*). He testified that they began seeing each other approximately five days per week on his boat and resumed being intimate (T. 741).

Respondent testified that on June 19, 2019, he and Person A had been in contact by telephone and text throughout the day until she became unreachable. He claimed that he was unconcerned and went to sleep but woke up suddenly because he had a "gut-feeling" that she was "across the street at her ex-boyfriend's house." Respondent testified that he drove to Person A home and saw her car parked on the corner: he surmised that he was at home and attempted to call her. The calls rang several times, then began going straight to voicemail. Respondent testified that he "made "a couple of runs down the block," then left the area to purchase something to eat. He testified while he was driving, he was on his telephone with a friend. He claimed that while he was making his last "run" down the block, he saw Person A "running out of her boyfriend's house and going into her driveway." Respondent testified that he drove toward her, honked his horn and told her "Go 'F' yourself" (T. 742, 744, 745, 880 881, 890, 891).

He testified further that he continued driving out of the area until he decided that he needed an explanation for "why she would do this to my kids" (T. 746). Respondent testified that he called Person A on her mobile telephone and told her, "Listen, I need to speak to you. We are done but I need to know why" (*Id.*). According to Respondent, Person A began lying to him, claiming that she was not at home and that she was at her friend Taylor's house sleeping (*Id.*). He testified that he told her, "GPS says it's seven minutes to get back to you, be outside in seven minutes or let me see what your ex-boyfriend has to say about this" (*Id.*).

Respondent testified that he drove back to [Person A]’s home, where she was waiting for him outside. He claimed that she was crying and remained in his truck for a few hours. He testified that he “just wanted to know why she would deceive my kids; I wanted nothing to do with her at this point.” Respondent testified that [Person A] refused to leave his truck and even threatened suicide. He testified that he did not recall the exact time when he met her but it was after midnight, “like 1:00, 2:00, 3:00 in the morning.” According to Respondent.

[Person A] offered him “excuses as to why she would still be with this guy.” Respondent denied that he threatened [Person A] and characterized the encounter as him breaking up with her. He further denied preventing her from leaving his truck (T. 747-749, 897).

He testified further that she suddenly told him that he had to leave; he claimed he was confused because “I’ve been trying to get rid of her now for a couple of hours. So I’m wondering as to why all of a sudden a change of heart. And I kind of figured at that point that her ex boyfriend will be leaving the house at the time. And obviously, she doesn’t want him to see us together in a car” (T. 749). Respondent testified he “called her out on it” and that

[Person A] admitted “Yeah, he is in the academy and he will be leaving now soon, and leave now or I call the cops” (*Id.*). He testified that he dialed “911” on his phone and said, “Go ahead, call the cops,” but [Person A] ended the call (T. 750). According to Respondent,

[Person A] got out of his truck, ran across the street and into her home; he then made a U-turn and parked his truck down the block near where her car was parked (*Id.*).

Respondent testified that he took a pad of Post-its and began writing a note to [Person A] which he intended to place on the window of her car. He testified that he intended to write to express “how disgusted I am of her and just, you know, we could have been great, but you know, that’s it, we are totally through.” While he was in his truck, he observed “her

"boyfriend" coming out of his house and meeting other recruits in a car pool; he also observed police officers from the ■■■st Precinct arrive on the block and concluded, "Hey, she really did call the cops" (T. 750-751). Respondent testified that "They came down Kelly and made a left onto her block. I kind of like waved to them while I was sitting there. You know, I was sitting and my windows were down writing this note and I see them box in this car" (T. 752, 901-902). He testified that "the boyfriend" did not go into the car with the other recruits and walked into Foundoulakis' driveway. Respondent testified that he remained for about 10-15 minutes then left, returning to his boat (*Id.*). Respondent denied that any police officers approached him or instructed him to exit his truck and speak to them (*Id.*). He testified that he thought he saw two more police cars arrive at the scene before he departed the location (T. 752-753). Respondent testified further that he had never met Collette before and that "I've never seen him before the day he testified" (T. 753).

Respondent testified that before he made it back to his boat, he received a call from a lieutenant at the ■■■ Precinct who advised him that he needed to come in to address an allegation; he claimed that he asked for "a few minutes . . . to get dressed," as he did not have any shoes on (T. 754 755). He testified further that when he appeared at the precinct and was told he was investigated for stalking, he responded, "Stalking? Like, how do you stalk a girlfriend?" (T. 755). Respondent testified that he then showed the investigators text messages on his telephone from ■■■ Person A ■■■ as well as photographs ■■■ Person A ■■■ sent him (T. 756).

Respondent was shown Respondent's Exhibits A through O; he identified Respondent's Exhibits A, B, C, D, E, K, L and O as photographs Foundoulakis sent him (T. 765-767). He testified that Respondent's exhibits F, G, H, I, J and N were photographs he took of ■■■ Person A ■■■ at various times (T. 767). Respondent identified that ■■■ Person A ■■■ sent him

Respondent's Exhibits A, B, C, K, L and M by text message; he testified that the photographs in Respondent's Exhibits D, E and O were most likely sent by Snapchat (T. 769). He testified further that the photographs in those exhibits represented color printouts of digital photographs which were stored on his mobile telephone (T. 777-778). He testified further that Respondent's Exhibit Q was a "selfie" [Person A] took in her backyard; and Respondent's Exhibit R was a "selfie" that she took on his boat (T. 795). Respondent testified that Respondent's Exhibit T was a photograph [Person A] took of a bathing suit and sent to him from a mall where she was considering purchasing it for Gretel (*Id.*). He testified that Respondent's Exhibits U, V, W and X were all taken on his boat on August 15, 2018. Respondent's Exhibit U was a photo he took of [Person A] and his son tanning on the deck; Exhibit V was a picture of [Person A] Exhibit W was a picture of Respondent, Andrew Lobianco, [Person A] and a female friend, Vicki, taken by a friend's daughter; and Exhibit X was a photo Respondent took [Person A] his daughter and two female friends. (T. 795- 799).

Respondent testified that Respondent's Exhibit P was a photocopy of his telephone records for his mobile telephone for the period October 11, 2018 to November 11, 2018 (T. 811). He testified that according to the records, [Person A] called him at least five times in a three-day period and had conversations of five minutes or more (T. 823). Respondent testified that Respondent's Exhibit Y was a 528-page exhibit representing various text messages which were stored on his mobile phone, the majority of which were exchanged between himself and [Person A]⁸ (T. 831).

⁸ In the interest of judicial economy, the Tribunal ruled that any text messages contained within Respondent's Exhibit Y which were not between Respondent and [Person A] were not admitted in evidence, rather than have the witness scroll through the exhibit to individually identify any such messages.

Respondent admitted that from the purchase of his boat on July 13, 2018 to October 2019, between the sale and purchase of his first and second homes, he lived on board and used the boat as his personal residence (T. 834, 836). He acknowledged that the Patrol Guide requires Members of Service to live at a physical address; Respondent contended that the address of the private marina where he berthed his boat, [REDACTED], met that requirement (T. 837, 879). Respondent acknowledged that when Lieutenant Symister told him he had to move, he did so (T. 838).

Respondent admitted in his testimony that he accessed Department computers to obtain information about [REDACTED] Person A [REDACTED] and members of her family (T. 838-839). He testified that the first time he did so, it was at [REDACTED] Person A's [REDACTED] request, and to reassure her that she had no points assessed to her license after receiving a moving violation in [REDACTED] (T. 839). Respondent testified that he accessed Department databases again after [REDACTED] Person A [REDACTED] disclosed to him that her father had been arrested; he contended that he queried her father in order to "know what I was getting myself involved in" (*Id.*).

Respondent also admitted in his testimony that he left his residence without first seeking permission from the District surgeon (T. 839-840, 879).

On cross-examination, Respondent admitted that during his Department interviews, he said that he did his best to keep his relationship with [REDACTED] Person A [REDACTED] secret from her family because they would not have approved of their age difference (T. 850). While he claimed that [REDACTED] Person A [REDACTED] eventually did tell her mother about their relationship, he conceded that he never disclosed that during his Department interviews; he asserted, however, that no one had asked him (T. 851).

Respondent claimed that he only visited [REDACTED] Person A [REDACTED] at work before they entered a relationship; he testified that he stopped going there after that because, according to Person A [REDACTED] her boss, [REDACTED], was asking too many questions (T. 857). He testified further that [REDACTED] Person A [REDACTED]' testimony regarding the occasions when he came to the bank and engaged in harassing behavior were false (T. 858). Respondent denied that [REDACTED] ever attempted to meet discretely with him and asserted that they always met in public places (T. 858). He further denied that [REDACTED] Person A [REDACTED] ever attempted to hide their relationship from the general public or told him to destroy pictures of her that he had taken (T. 860). He testified that he never attempted to keep his relationship with her secret from his children or told them to destroy any evidence of communications they had with [REDACTED] Person A [REDACTED] (T. 861).

Respondent admitted that when he went to TD Bank to make his \$90,000 withdrawal, he lied to the bank about the purpose for which he was withdrawing the funds (T. 861-862).

Respondent acknowledged that he saw Andrew Collette as “[his] competition,” and queried his name in a Department database to “see if [REDACTED] Person A [REDACTED] was being truthful” (T. 863-864). When asked if he thought there was anything improper about his actions, Respondent testified, “I guess I let my heart get in the way of my brain” (T. 865). Respondent further admitted that he used a paid reverse-telephone number service to query Andrew Collette and Person A [REDACTED] (T. 867). He further admitted that he queried [REDACTED] Person A [REDACTED] license plate number in Department databases to determine “how truthful she was about her excursions to other neighborhoods in Brooklyn” (T. 868). He explained that:

“Well, she has an aunt, her mother’s sister, that lives in, I believe [REDACTED]. And over the course of a month, this lady celebrated four birthdays. So after the second birthday, I’m like okay, now I am getting a little suspicious here. Why is this middle-aged woman having four birthdays? So I ran [REDACTED] Person A [REDACTED]’s plates and saw that she never left [REDACTED] which meant that she lied to me. So that opened a little doorway of caution on my end.”

(T. 868). When asked why he wanted to keep seeing Person A after finding out that she supposedly lied to him, Respondent answered, "Because love is blind" (T. 869).

When Respondent was asked what he intended to do with any information he obtained about Andrew Collette through his queries of databases, he answered, "See if he posts anything showing him and her together. I mean, nothing. Anything social media-wise" (T. 874).

Respondent admitted to monitoring Person A's social media activities. "In the beginning of the relationship to figure out her lifestyle. And then towards the end when I started getting suspicious again, I did it again" (*Id.*). He acknowledged that all of his monitoring activities were conducted without Person A's knowledge (*Id.*).

Respondent denied that when he drove to Person A's residence on June 19, 2019, he intended to confront either her or Collette; he just went to see if she was being faithful to him (T. 881-882). He conceded that he spent several hours on her block before he saw her exit Collette's home (T. 882). Respondent claimed that he knew where Person A's residence was because she had told him but that she also told him "never, ever to go there" (T. 884).

Respondent contended that the reason he called Person A after he believed that he had caught her in a lie about getting back together with Collette was that, "Because we are in a relationship. I just caught her with another man, and I needed an explanation" (T. 892). When asked why he needed an explanation, he answered, "Because I had just wasted 11 months of my life and my kids' life with a girl that played both of us" (*Id.*). He conceded that he was upset because he felt that Person A had wasted his time (T. 893). When asked what he thought would happen after he turned around and drove back to [REDACTED] home to confront her, he testified, "Well, my intent to go back was just so I could watch her eyes when she told me why

she was still with this guy" (T. 894). When asked again what he thought would come out of a confrontation with [REDACTED] Person A [REDACTED] as upset as he was at the time. Respondent testified:

"I will tell you exactly what I thought would come out of it. I would tell her you're done. I am done with you, but I need to know why. That was my intention on going back. Why would you play me and my children for 11 months? I was done with her at that point. Once I seen her running across the street, I didn't care. I don't care – and not to be cold – I don't care if his father had a heart attack and she ran there because she was going to be a nurse. I did not care the reason she was there. It was just the mere fact that I seen her running out of his house and I said I am done with her lies. I am done with her but I need to know why she would lie to me and my children"

(T. 895).

Respondent initially denied that when he spoke to [REDACTED] Person A [REDACTED] after returning to her residence, he threatened to tell Collette about her relationship with him; when pressed further on that point, he admitted, "Yes. When she told me that she never actually broke up with him and I was really a side piece. that made me even more upset. And I said, 'well, let's see what he has to say about this'" (T. 896). He also denied that [REDACTED] Person A [REDACTED] asked him to leave the area several times (*Id.*). Respondent then claimed that when [REDACTED] Person A [REDACTED] told him inside his truck that he had to leave, he conducted a GPS mapping search to determine how long the commute would be from their location to the Police Academy; he testified that the results led him to believe that Collette would make the 0700 hours muster if he left the location at that time and that was the reason [REDACTED] Person A [REDACTED] wanted him to leave immediately (T. 897-898).

Respondent admitted that he was involved in whatever had led up to [REDACTED] Person A [REDACTED] calling 911 and characterized it as a "domestic incident" (T. 902-903). He also admitted that if he was involved in a domestic incident, then he was required to remain on scene and identify himself to responding police officers but initially claimed that he had done so (T. 903). When asked whether he identified himself to the responding police officers, he testified, "No, nobody came. I am not pulling up in front of her house after that" (*Id.*). Respondent admitted that he did

not get out of his truck and approach the responding police officers but explained, "No, because I was barefoot. If I had shoes on, I would have walked over" (*Id.*). He eventually conceded that he should have driven himself in front of the location and identified himself to the police officers, testifying, "In hindsight, yes, I should have" (T. 904).

Credibility

In a case such as this where two witnesses testify to dramatically different versions of the same event, credibility determinations are a challenge for the finder-of-fact. The determination is made more complex when the parties are alleged to have been involved in an intimate relationship. It is often that the end of the relationship presages an attempt to recast its historical record. When those parties are called upon to describe their interactions with each other, their narratives are often divergent. Each party may choose to selectively omit or sanitize portions of the relationship which may be perceived by an outside observer to be embarrassing; another party may seek vindication in their assessment of the relationship and the reasons for its demise. A finder-of-fact must be mindful of the varying motivations of the participants and the effect that motivation may have upon witness credibility.

In this case, Person A testified that Respondent engaged in a pattern of harassing behavior over a period of over 1 ½ years; she strenuously denied that there was any type of personal relationship between herself and Respondent.

Respondent, on the other hand, just as vociferously asserted that he and Person A had been involved in a long-term, intimate relationship and that she knowingly gave false testimony before the Tribunal. He further attempted to justify certain actions he admitted to taking as acceptable responses to her perceived betrayal of his affections. In support of his assertion that he and Person A were in an intimate relationship, Respondent offered evidence of text

messages and photographs which he claimed Foundoulakis sent him, rebutting the accusation that he harassed her.

As the analysis of each instance of alleged misconduct will make clear, whether or not

Person A [REDACTED] and Respondent were involved with each other is not dispositive of whether Respondent committed misconduct. If, in fact, they were involved, the effect of the existence of the relationship is to provide insight into their respective motivations to testify as they did.

Despite the multi layered aspects of these two witnesses' credibility, the Tribunal will apply the traditional credibility factors such as logic, consistency, corroboration, bias and interest.

I find [REDACTED] Person A [REDACTED] credible with respect to her testimony regarding the events of June 19-20, 2019. I make this finding because her testimony was corroborated in large part by Police Officers Burns, Geoghegan, and Collette in their respective testimonies before this Tribunal. I further credit her version of those events because Respondent admitted to the wrongful acts which constitute misconduct, although he attempted to characterize them as innocent acts excusable by the passions of the moment.

I find [REDACTED] Person A's [REDACTED] testimony regarding the pattern of alleged harassment she attributed to Respondent outside the events of June 19-20, 2019, to be more difficult to reconcile. Her factual assertions regarding: (1) Respondent's alleged pattern of harassing behavior at TD Bank; and (2) her claim that Respondent made a false report to TD Bank which resulted in her termination, are uncorroborated. While the text messages and photographs I admitted into evidence as Respondent's Exhibits lacked sufficient authentication to have persuasively established that [REDACTED] Person A [REDACTED] authored them and sent them to Respondent, many of the text messages purport to be from a sender identified on Respondent's mobile telephone as [REDACTED] Person A [REDACTED]

TD." The telephone number displayed on the text messages is one which [Person A] admitted is the same as her mobile telephone number. These facts raise a doubt in my mind as to whether they can be reconciled with Foundoulakis' denial of any relationship with Respondent without additional evidence. At this stage of the proceedings, that doubt will have to remain unresolved.

I find the testimony of Police Officer Andrew Collette to be credible to the extent that he was a percipient witness to the events of June 19-20, 2019. While I am mindful that he denied ever having broken up with Foundoulakis, the concerns expressed above with respect to [Person A]' credibility, as it pertains to whatever relationship she may have had with Respondent, do not implicate Collette's credibility.

I find the testimonies of Lieutenant Symister, Police Officer Burns and Police Officer Geoghegan to be logical, forthright and credible. They are disinterested witnesses in this litigation and testified as a foreseeable part of their official duties.

Respondent is an interested witness in this proceeding. I also had the opportunity to observe his demeanor as he testified before the Tribunal. It is my belief that his testimony is so permeated with self-interest, that it is unreliable. During his testimony, Respondent admitted to lying to [Person A] in their first meeting, then attempted to characterize that lie as inconsequential. He also admitted to misusing Department databases to conduct queries on Foundoulakis and her family, then tried to justify this abuse of his power because he wanted a better sense of who she was. He further sought to justify his behavior during the June 19-20, 2019 incident as warranted by his entitlement to an explanation from Foundoulakis for her supposed disloyalty.

For similar reasons, I find the testimonies of Gretel M., Hansel M., and Andrew Lobianco to be unreliable due to their bias. It is obvious that Gretel and Hansel are financially dependent

Members of Service, as well as the citizens of this City, had a right to expect better. In such a situation of alleged harassment, it is a New York City Police Officer who responds to the scene with the expectation that they will re-establish the peace to the best of their ability. Instead, Respondent was the source of the disorder and tumult, without any legitimate purpose.

I therefore find Respondent Guilty of Specification 1.

Specification 2: Failure to Remain at the Scene

I find the Department has met its burden of proof by a preponderance of the relevant credible evidence that Respondent failed to remain at the scene of an off-duty incident, as he was required to do.

Patrol Guide procedure 212-32 requires off-duty uniformed members of the service who are at the scene of an unusual police occurrence as a participant or a witness to remain at the scene and request the presence of the Patrol supervisor in the precinct of occurrence. "Unusual police occurrence" includes "family disputes and other incidents of domestic violence in which the officer is either a participant or a witness" (PG. 212-32).

Respondent admitted during his trial testimony that: (1) he observed police units responding to [Person A]' address while seated in his truck down the block from her residence; (2) he concluded that the police officers were responding to 911 calls [Person A] told him she was going to make because he would not leave the area; (3) he considered the nature of the 911 call to be a domestic incident; (4) he did not identify himself to either Police Officer Burns or Police Officer Geoghegan; and (5) he did not call for a supervisor to respond to the scene (T. 750-751, 902-904).

Police Officers Burns and Geoghegan each testified that they had no interaction with Respondent at the scene of the incident, despite looking for Respondent's truck after they had

interviewed [redacted] Person A [redacted] who identified Respondent by name and told the police officers where he was located the last time she saw him. I find Respondent's defenses to this specification, that he did not present himself to the responding police officers because he was barefoot and that he cannot be responsible for failing to identify himself if neither of them approached him, to lack merit.

I therefore find Respondent Guilty of Specification 2.

Specification 3: Unauthorized Use of Department Databases

I find the Department has met its burden of proof by a preponderance of the relevant, credible evidence that Respondent wrongfully accessed Department databases for personal reasons unrelated to Department business.

Patrol Guide procedure 219 14 directs Members of Service, when using Department computer systems, to make only official inquiries which relate to the official business of the Department (P.G. 219 14, para. 2).

Respondent admitted during his trial testimony that he "ran" [redacted] Person A [redacted] and her father on Department databases because he wanted to find out "what [he] was getting [him]self involved in" (T. 839). He further admitted that he utilized Department databases to query Andrew Collette because "he was my competition" (T. 863, 864). There is no evidence in the record that would support a finding that any of these queries were related to official Department business. There is similarly no evidence in the record to suggest that this conduct was a mistake: Lieutenant Symister's testimony established that Respondent accessed Department data bases on 36 occasions.

I therefore find Respondent Guilty of Specification 3.

upon Respondent and an adverse determination in this proceeding could have a direct and substantial impact upon their lives. Lobianco openly professed such loyalty to Respondent that he took the witness stand without ever inquiring as to the nature of the proceeding or the charges against Respondent because he did not want to know any details.

Specification 1: Unwanted Contact

I find that the Department Advocate has met his burden of proof by a preponderance of the credible, relevant evidence that Respondent instigated and perpetuated a physical and verbal confrontation with [REDACTED] Person A [REDACTED] on June 20, 2019, in which he refused to leave the immediate area of her residence and threatened to confront Andrew Collette, her professed boyfriend, with an allegation that she had been unfaithful to Respondent and Colette. I further find that such conduct was prejudicial to the good order, discipline and efficiency of this Department.

I reject Respondent's assertion that [REDACTED] Person A [REDACTED] provided her home address to him voluntarily; his admission to misusing Department resources to querying her name and license plate information belies that claim. I further reject Respondent's characterization of the episode as merely asking her for an explanation of her rejection of his romantic interest, which he felt, based upon his testimony, that she owed him.

The evidence establishes, largely by Respondent's admissions, that he drove his truck, uninvited, to the area of [REDACTED] Person A [REDACTED]' residence, where he remained for a period of several hours, driving back and forth on her block, surveilling her home and that of Police Officer Collette, in the hope that he would catch her in the act of "cheating" on him. This conduct occurred from approximately 2200 hours on June 19th to 0500 hours on June 20th.

By his own testimony, Respondent declared that when he saw [redacted] Person A [redacted] leaving Collette's residence and crossing the street to her home, he believed that he had caught her in a lie and hurled that accusation at her through the open window of his truck, calling her a gender-specific epithet. Instead of leaving the area for good, he drove away but returned in order to force another confrontation with [redacted] Person A [redacted] in which he convinced her to enter his truck by threatening to ram his truck into her home and Collette's home.

The credible evidence demonstrates that Respondent then berated Foundoulakis, repeatedly pressing her for an explanation of how she could have betrayed him and his children. Respondent also threatened to confront Collette at his residence, a man whom he had never met, at 0500 hours. I credit [redacted] Person A's [redacted] testimony that she repeatedly asked Respondent to leave and that he did so only after she called 911.

This Tribunal makes no finding as to the existence or non-existence of a personal relationship between [redacted] Person A [redacted] and Respondent. Whether or not such a relationship existed, the manner in which he conducted himself with her on June 20, 2019, was abusive, disrespectful and despicable.

I further find that Respondent's failure to present himself to Police Officers Burns and Geoghegan when they responded to [redacted]'s residence at her request, was reflective of his consciousness of guilt, in direct contradiction to his boasts to [redacted] Person A [redacted] that calling the police would accomplish nothing because they would leave him alone.

Finally, I find overwhelming evidence in the record that this course of conduct was prejudicial to the good order, discipline and efficiency of this Department. Contrary to Respondent's dubious assertions that he behaved as anyone else in such a situation would have behaved, he is not "anyone else." He is a New York City Police Officer, of whom his fellow

Specification 4: Attempting to Impede an Official Investigation

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent attempted to impede an official investigation into the allegations made by [REDACTED] Person A [REDACTED] on June 20, 2019.

From the first time that Respondent was confronted with the allegations [REDACTED] Person A [REDACTED] made, he attempted to focus on establishing proof of a relationship between he and [REDACTED] Person A [REDACTED] as a defense against an accusation of "stalking".⁹ I find that this attempt was likely guided by Respondent's mistaken belief that proof of a relationship with [REDACTED] Person A [REDACTED] would insulate him from accountability for his conduct, particularly during the evening and morning of June 19-20, 2019.

As discussed above in the analysis of Specification 1, this Tribunal makes no factual finding regarding the existence or non-existence of a relationship between [REDACTED] Person A [REDACTED] and Respondent. In the absence of a finding that there was no relationship, there is insufficient evidence in the record from which to find his use of that purported defense was an attempt to impede the investigation.

Based upon the foregoing, I find Respondent Not Guilty of Specification 4.

⁹ Merriam-Webster defines "stalking" as "the act or crime of willfully and repeatedly following or harassing another person in circumstances that would cause a reasonable person to fear injury or death because of express or implied threats broadly: a crime of engaging in a course of conduct that serves no legitimate purpose and seriously alarms, annoys, or intimidates that person ("Stalking." *Merriam-Webster.com Legal Dictionary*. Merriam-Webster, <https://www.merriam-webster.com/legal/stalking>. Accessed 17 Dec. 2021; see New York Penal Law § 120.45[1], Stalking in the Fourth Degree ["A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted.])

Specification 5: False Statements

I find that the Department has met its burden of proof by a preponderance of the credible relevant evidence that Respondent made a false statement during his Department interview on June 20, 2019.

During that Department interview, Respondent was asked the following questions and gave the following answers:

- Q. Okay, did you ever use any Department computer to access any private information or anything like that?
A. No, no. There's nothing – it was –
Q. Well, you know.
A. Yeah, it was -- no, no, absolutely not. It was a relationship. There was no reason to –

(Dept. Ex. 1A, p. 23, ln. 11-16).

During his trial testimony, Respondent admitted that he utilized Department databases to obtain information about [REDACTED] Person A [REDACTED] and her father, as well as Andrew Collette (T. 838-839, 863-864, 868). His trial testimony on this point is irreconcilable with his previous statement to investigators on June 20, 2019. I find that his denial that he had utilized the databases was false and was material, given the circumstances. I further find that his words did not amount to a mere denial of culpability; they were an affirmative assertion of fact which he knew to be untrue at the time he made it.

I further find that Respondent's conduct was prejudicial to the good order, discipline and efficiency of this Department. There was nothing preventing Respondent from admitting to have taken leave of his better judgement because of a romantic interest and engaging in regrettable behavior. Such a declaration likely would have resulted in some discipline. Respondent's chosen course of action sought to avoid accountability for the acts he committed and, in so

doing, frustrate the responsibility of this Department to hold Members of Service to a higher standard of conduct than the public.

I therefore find Respondent Guilty of Specification 5.

Specification 6: Failure to Comply with Residence Rules

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent failed to comply with Department residence rules.

Administrative Guide procedure 304-25 requires: (1) Members of Service to reside within City of New York or Westchester, Rockland, Orange, Putnam, Nassau or Suffolk Counties; and (2) provide the Operations coordinator with a physical home address (A.G. 304-25).

Respondent admitted during his trial testimony that for a period of approximately one year after he sold his family home in 2018, he resided on a boat, berthed at a private marina in [REDACTED] (T. 834, 836). He claimed that the marina had a street address and that he received mail through the marina office (T. 837, 879).

Based upon a search of this Tribunal's database of decisions, this is a case of first impression. In support of their charge, the Department Advocate cites the Rules of the City of New York regulations for the Department of Parks and Recreation, which proscribe the use of a boat for any unlawful purpose.

I find that, without further evidence, the regulations cited above are sufficiently ambiguous to allow for a reasonable interpretation that a Member of Service is not precluded from residing on a boat within the City of New York.

I therefore find Respondent Not Guilty of Specification 6.

Disciplinary Case No. 23512-2021

Person A [REDACTED]

Person A [REDACTED] testified that in or about June or July 2020, she began receiving text messages and sexually explicit photographs on her mobile telephone from unknown telephone numbers (T. 132). These photographs were generally of men's genitalia (*Id.*). She responded to several of the text messages asking who the sender was but received no response (T. 133-134). On one occasion, she sent a reply text asking who the sender was and received a response apologizing for offending her but that he was only following the instructions on a message he had seen in a booth at an adult video store (T. 134). When [REDACTED] Person A [REDACTED] professed to have no idea what he was talking about, the sender sent her a photograph of the message he claimed he saw in the video store (T. 134-135). She testified that the message indeed contained her mobile telephone number and directed person to "send dick pic, then call" (T. 135).

Person A [REDACTED] asked the sender for the address of the video store and he replied with the address of an adult video store in [REDACTED] (T. 134). Several days later, she drove to the address of the video store she had been given and asked the person behind the counter whether or not the establishment had booths (T. 134-135). When she was told where the booths were, she looked into each one until she found the same message she had been sent by the unknown sender (T. 135-136). Person A [REDACTED] took a photograph of the message and forwarded it to then-Sergeant Symister, whom she met previously when she was interviewed regarding the events of June 20, 2019 (T. 133, 139). She eventually met with Sergeant Symister and provided copies of text messages from her mobile telephone which she stated were from the unidentified callers, and the photographs they sent her in those messages (T. 148 149; Dept. Ex. 2).

Person A [REDACTED] testified that she continued receiving the unwanted text messages and photographs for several months (T. 139).

Lieutenant Sarcanda Symister

Lieutenant Symister testified that she had occasion to communicate with Person A [REDACTED] again in July 2020 when she contacted her with additional allegations of misconduct against Respondent (T. 291). In that regard, she acknowledged receiving sexually explicit text messages and nude photographs which [REDACTED] Person A [REDACTED] forwarded to her (T. 292). Lieutenant Symister was shown Department Exhibit 2 and identified it as a compendium of the texts and photographs [REDACTED] Person A [REDACTED] sent her (T. 292-293; Dept. Ex. 2). She testified further that Person A [REDACTED] believed Respondent to be responsible for her receiving these unwanted messages and photographs because "her wanted to ruin [her] life" (T. 293). [REDACTED] Person A [REDACTED] told her that Respondent had called the global management of her bank and gotten her fired (*Id.*).

Lieutenant Symister testified that she visited Sunset Video and Jayoda Video in Sunset Park, Brooklyn as part of her investigation (T. 294). She testified further that she interviewed store employees at both locations and showed them Respondent's Department photograph: according to Lieutenant Symister, only one employee was able to identify Respondent as someone who patronized the store (T. 297-298). Lieutenant Symister confirmed that both stores had booths in them and discovered that in one booth she examined, she saw writing on the wall of the booth that was consistent with [REDACTED] Person A [REDACTED] report (T. 298). She took a photograph of the writing with a view toward obtaining handwriting analysis of the writing to determine if Respondent had written it (*Id.*).

Lieutenant Symister testified that after consulting with personnel at the Police Laboratory, she collected known samples of Respondent's writing, such as UF-61s, domestic

indent reports, overtime slips and memo book entries (T. 299-300). Finally, she collected handwriting exemplars from Respondent during an interview (T. 300). Respondent told Lieutenant Symister that he could not write with his regular writing hand and wrote with his "non-dominant hand" (T. 300-301). She made a notation on one of the exemplars that Respondent wrote them with his left hand (T. 322, 344).

Once Lieutenant Symister collected the handwriting exemplars, the known samples of Respondent's handwriting and the questioned writing, she vouchered them and forwarded them to the Police Laboratory for forensic analysis (T. 300-304; Dept. Exs. 4A, 4B, 4C, 4D).

Lieutenant Symister also conducted license plate reader queries for Respondent's license plate (T. 305). She testified that due to Respondent's status as sick while on modified duty, he needed permission from his District Surgeon before he was authorized to leave his residence (T. 306, 316). Lieutenant Symister's investigation substantiated her suspicion that Respondent had been outside of his residence during the suspect period. In a Department interview on November 10, 2020, Respondent admitted that he had left his residence on approximately 15 occasions between August 2, 2020 and November 9, 2020 to go to Brooklyn and Queens (T. 308). He further admitted that he did not seek permission from anyone to leave his residence because he was unaware that he had to (*Id.*). Respondent further admitted to patronizing both video stores on several occasions, although he denied writing [REDACTED] Person A [REDACTED] telephone number on the wall of a booth (T. 310-312).

Grace Warmbier

Grace Warmbier is a criminalist assigned to the Questioned Documents Unit of the Police Laboratory (T. 357). She testified as an expert witness in the field of forensic examination of questioned documents (T. 359-368). Warmbier testified that she conducted a forensic document

analysis in 2020 involving suspected writings of Respondent, as requested by Lieutenant Symister (T. 368-369).

Warmbier identified Department Exhibit 4B as containing known and questioned documents related to the investigation (T. 371). She testified that the known documents included originals of domestic incident reports, leave of absence reports, overtime reports, 61 reports; the questioned writings consisted of two photographs of writing on a wall (T. 372).

Warmbier testified that Department Exhibit 4A contained two photocopies of a questioned writing (T. 374). The exhibit also contained known writings of Respondent, including an overtime slip, a photocopy of an overtime slip, a photocopy of a leave of absence report, three photocopies of arrest reports, a photocopy of a complaint form, a photocopy of the cover of a memo book, photocopies of memo book pages, and a photocopy of a nine-page complaint report (T. 375).

Warmbier testified that the Police Laboratory uses seven levels of findings:

- a. Identification;
- b. Elimination;
- c. No conclusion;
- d. Indications did write;
- e. Indications did not write;
- f. Probably did write; and
- g. Probably did not write.

(T. 375-376). She testified that the highest degree of certainty in her field is identification and the next highest is probably did write (T. 376-377). Once a document examiner reaches an opinion, a report is prepared and an independent verification analysis is conducted by a questioned documents examiner in the Suffolk County Crime laboratory (T. 377-378).

Warmbier testified that in this case, Jeffrey Luber, conducted that verification analysis (T. 378).

Warmbier testified that she prepared a demonstrative piece of evidence, Department Exhibit 5, as an aid to the Tribunal in understanding her findings (T. 379-380). She testified further that Department Exhibit 6 is a 104-page document representing a photocopy of her analytical notes (T. 406-407). Warmbier's opinion, after consideration of the known and questioned writings, based upon her training and experience, is that Respondent probably did write the questioned documents (T. 407-408). She testified that her conclusion was independently verified by Luber, who reached the same conclusion (T. 408).

Respondent

Respondent testified that he was not the author of the questioned writings which were found in the video stores in Brooklyn (T. 843). He testified further that he was right-handed and provided the handwriting exemplar with his left hand (*Id.*). He testified further that he was taking a painkiller and a muscle relaxer at the time he provided the handwriting samples (*Id.*). Respondent admitted that he had patronized the video stores, as well as the booths in the stores, on multiple occasions over the course of 20 years; he asserted that he had visited them at least twice with [Person A] (T. 844, 905-906). Respondent disputed the assertion that he never told anyone in this Department that he had visited the video stores with [Person A] claiming that, "Nobody ever asked me" (T. 905).

Specification 1: Publishing Private Information

I find that the Department has met its burden of proof, by a preponderance of the relevant, credible evidence, that Respondent published [Person A's] private information.

I credit Person A's testimony that she received unwanted messages and pictures, as these assertions were corroborated by the images and messages she forwarded to Lieutenant Symister (Dept. Ex. 2).

I find Police Laboratory Criminalist Grace Warmbier to be a disinterested witness. Her training, experience and expertise provided useful information to the finder of fact, despite being at the early stages of her career as a questioned documents examiner. I credit her expert testimony that Respondent probably may have written the questioned writings, a conclusion that was also made by an independent examiner from the Suffolk County crime laboratory. I take into account that Respondent made the handwriting exemplars with his left hand, which he testified was his non-dominant hand.

I placed significant weight on Respondent's admission that he was a long-standing patron of the video stores where the questioned writings were found. I discounted Respondent's denial that he authored the writings because his trial testimony was often inconsistent and unreliable. I also gave significant weight to my findings with respect to Respondent making misleading statements, as well as a false statement, during his Department interview. Finally, I gave great weight to Respondent's admission, under oath, that the first time he met Person A he lied to her about the intended use of the finds in his account. Based upon these factors, I find that Respondent's denial with respect to this alleged misconduct, is unworthy of belief.

I further find that Respondent's conduct was prejudicial to the good order, discipline and efficiency of this Department. Respondent's actions were cowardly and petty: two characteristics which are inconsistent with the core values of this Department and the men and women who serve it.

I therefore find Respondent Guilty of Specification 1.

Specification 2: Absence from Residence

I find that the Department has met its burden of proof by a preponderance of the credible relevant evidence that Respondent left his residence on several occasions while he had reported regular sick while on modified assignment duty without first seeking permission.

Interim Order 63 (8/22/19) directs that a uniformed member who has reported regular sick "must remain at residence, or other authorized location, for their entire sick occurrence, unless permission to leave is granted by Department surgeon or Sick Desk supervisor, if: (2) uniformed member is on modified assignment" (Interim Order 63; *see also* Administrative Guide procedure 330-01, formerly P.G. 205-01).

Respondent admitted during his trial testimony that he left his home on several occasions while he was modified and on sick report (T. 839-840). He further admitted that he never sought permission from the District surgeon before he did so, although he claimed he was unaware that he was required to (T. 879). I find Respondent's lack of knowledge defense lacks merit.

I therefore find him Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. See 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum. It includes a prior formal disciplinary history. In 2015, he was found to have engaged in a scheme to direct towing companies to accident scenes in violation of Department DARP procedures, then failing to create Activity Log entries to obscure his misconduct.

Respondent, who was appointed to the Department on July 1, 2004, has been found guilty of (1) making false statements during a Department interview; (2) engaging in unwanted contact with [REDACTED] Person A [REDACTED] and threatening her physical safety; (3) failing to remain at the scene of a domestic incident; (4) conducting unauthorized searches on Department databases; (5) publishing [REDACTED] Person A [REDACTED] private information in a public place; and (6) being out of his residence while on sick report and modified. The Department has recommended that Respondent's employment be terminated. I concur in that recommendation.

The presumptive penalty for intentionally making a false statement is termination.

Respondent's conduct toward [REDACTED] Person A [REDACTED] was vile and contemptible. Regardless of what their relationship truly was, no human being deserves to be treated in that manner. Respondent's attempts to justify his bizarre behavior fly in the face of his declaration that he hoped to build a life with [REDACTED] Person A [REDACTED]. Respondent's act of publishing [REDACTED] Person A [REDACTED] private information in a place where he should have known it was likely that his message, left in two establishments, would generate unwanted and degrading communications with her, demonstrates that he places his ego ahead of the norms of common decency.

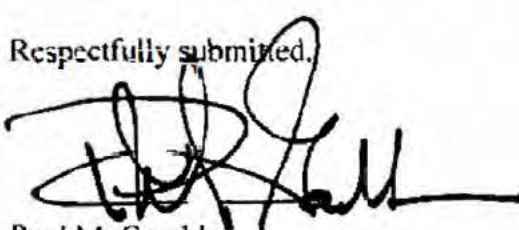
Respondent's misconduct in this case continues a pattern of dishonesty first sanctioned in his 2015 case. His misuse of Department databases, lying to investigators and attempting to create a distracting narrative in this case are inconsistent with Respondent holding a position of trust.

It bears mentioning that at no point during these proceedings did Respondent ever express remorse for his behavior toward [REDACTED] Person A [REDACTED]

In the view of this Tribunal, the evidence in the record supports a finding that Respondent's pattern of misconduct, lack of integrity and lack of remorse render him incompatible with continued service in this Department.

I therefore recommend that he be DISMISSED.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED



JAN 3 2022

MECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER GEORGE MASTROKOSTAS
TAX REGISTRY NO. 935263
DISCIPLINARY CASE NOS. 2020-21673 & 2021-23512

Respondent was appointed to the Department on July 1, 2004. On his most recent annual performance evaluations, he was rated as "Exceeds Expectations" for 2017 and 2018 and received a 4.0 overall rating of "Highly Competent" for 2016. He has been awarded one medal for Exceptional Merit, one for Meritorious Police Duty- Integrity, twelve medals for Excellent Police Duty and two medals for Meritorious Police Duty.

In 2015, Respondent forfeited 45 vacation days and was placed on dismissal probation after being found Guilty of failing to follow multiple DARP procedures at vehicular accident scenes on eight occasions and failing to properly advise the Communications Sections that vehicles were removed from those scenes, in addition to failing to make required Activity Log entries related to the eight accident scenes and using his personal phone on multiple occasions while on duty.

In connection with Case No. 2020-21673, Respondent was placed on Level 2 Discipline Monitoring on July 21, 2020; monitoring remains ongoing. He was previously on Level 2 Discipline Monitoring from June 2010 to July 2015 in connection with the above referenced case.

For your consideration,

Paul M. Gamble
Assistant Deputy Commissioner Trials